IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.288 of 2004

Smt Kashibai Laxman Kamble...Petitioner
vs
Shri Rajaram Gomatik & ors... respondents

Mr. M B Kotak for petitioner
Mr. S.S Vidyarthi for respondent no. 2
Mr.S.K.Chincholikar, A.G.P. for respondent no.3.

CORAM: A.P.SHAH J.
Dated 26.l0.2005

P.C:

. On 2.5.200l one Laxman Pandurang Kamble, a resident of Reay Road Zopadpatti had a quarrel with one Bakshi Khan and Rabar Hussein and during the scuffle that ensued Laxman Kamble was thrown on the road and a lorry bearing No.MCY l756 owned by the respondent no.l ran over him. He was taken to hospital and was declared dead. The daughter of Laxman Kamble filed a FIR with the Byculla Police Station and offence under sections 304, 304A, 323 and 504 of IPC was registered against Bakshi Khan, Rabar Hussein and the driver of the lorry.

. The petitioner who is the widow of the deceased Laxman Kamble preferred an Application No.l255(A) of 200l before the Motor Accidents Claims Tribunal, Mumbai for no fault compensation under section l40

of the Motor Vehicles Act, l988. The application was however rejected by the tribunal on the ground that no nexus is established between the death and rash and negligent driving on the part of the driver of the lorry. The legality and propriety of this order is questioned in this petition.

. I have heard the learned counsel for the parties. I have also gone through the relevant records including the FIR. It is clearly seen from the FIR that the deceased was run over by the lorry owned by the respondent no.l which is insured with the respondent no. 2 Insurance Co. The short question is whether the tribunal was right in holding that, even so, the widow was not entitled to "no fault compensation" under section l40 of the M V Act.

. Section l40 reads as under:

> "Liability to pay compensation in certain cases on the principle of no fault;
>
> (l) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle

shall, or, as the case may be, the owners of the vehicle shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (l) in respect of the death of any person shall be fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under sub-section (l) the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (l) shall not be defeated by reason of any wrongful act,neglect or

default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement".

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force;

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.

. By reason of sub-section (l) of section l40 an absolute liability is cast upon the owner of a vehicle to pay compensation in respect of death or permanent disablement resulting from an accident

arising out of its use. By reason of sub-section (3), the claimant is not required to plead or establish that the death or disablement was due to a wrongful act or neglect or default of the owner or any other person. Sub-section (4) is in two parts.The first part states that a claim for compensation under the section is not defeated by reason of any wrongful act, neglect or default of the person who had died or suffered permanent disablement. The second part states that the quantum of compensation is not to be diminished even if the person who had died or suffered permanent disablement bore some responsibility for his death or disablement.

. On a plain reading of section l40 there is no basis for holding that the claim thereunder could be made only if there is some negligence on the part of the driver of the vehicle. In Gujarat State Road Transport Corpn vs Ramanbhai Prabhatbhai ,l987 ACJ 56l the Apex Court while construing S.92 A of the Motor Vehicles Act, 1939 which is almost identical with sec.140 of the new Act observed:

> "... From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor

vehicles highly dangerous. "Hit and run" cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicle accidents as a liability without fault. In order to meet the above social demand on the recommendation of the Indian Law Commission, Chapter VII A was introduced in the Act. Section 92A to 92E of the Act are to be found in Chapter VII A. Section 92E of the Act provides that the provisions of Chapter VII A shall have effect notwithstanding anything contained in any other provisions of the Act or of any other law for the time being in force. Section 92A of the Act

provides that where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles,the owner of the vehicle shall, or as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said section".

. Therefore if it is established by the claimant that the death was caused to the the accident arising out of the use of a motor vehicle then they will be entitled for payment of compensation. In the present case in the light of the facts as disclosed in the FIR, I have no hesitation in coming to the conclusion that the death of the deceased (Laxman Kamble) was caused due to the accident arising out of the use of the motor vehicle. Therefore the tribunal was clearly in error in denying the compensation under sec.140 of the Act. Consequently, the impugned order of the tribunal is quashed and set aside. The application preferred byn the petitioners under sec.140 stands granted. The respondent no.2 Insurance Company is directed to pay Rs.50,000 to the petitioner with

interest at the rate of 9% p.a. from the date of application within 8 weeks from today. Petition is accordingly disposed of.